IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPEAL NO. 923 OF 2000

Vilas Keru Edake,
Prisoner NO.C01303,
Kolhapur Central Prison,
Kalamba, Kolhapur-415007. .. Appellant
(Orig.accused)

Vs.

State of Maharashtra. .. Respondent.

Miss D.M. Shah, Advocate appointed for the appellant.

Mrs. U.V. Kejriwal, A.P.P. for the State.

CORAM : V.G.PALSHIKAR &
ANOOP V.MOHTA, JJ.

DATE : 24TH SEPTEMBER, 2004.

ORAL JUDGMENT (PER ANOOP V. MOHTA, J.)

. The appellant-accused, father-in-law killed Sou. Manisha Pratap Edake. We are dismissing this appeal filed by the accused against the judgment and order passed by the Additional Sessions Judge, Sangli, dated 4/9/2000, whereby the accused has been convicted of the offence punishable under Section 302 of Indian Penal Code and sentenced to suffer rigorous imprisonment for life and to pay fine of Rs. 5000/- in default to suffer rigorous imprisonment for six months. The appellant was acquitted of the offence under Section 316 of Indian

Penal Code.

2. Advocate for the appellant put forth the grounds as raised in the memo of appeal and has taken us to the testimonies of the witnesses and documents placed on the record and contended to reverse the order of conviction and prayed for acquittal. The learned A.P.P. opposed the same and supported the Judgment of Sessions Judge.

3. After re-appreciating the evidence, as well as, material on the record, we confirm the reasoning given by the learned Judge and the order of conviction on the foundation that the accused intentionally and knowingly committed the murder of the deceased Manisha Edake, by means of sickle on 17/3/1999, at about 7.30 p.m.. The appellant-accused has also charged that on the same day, time and place, he caused death of unborn child by, giving sickle blow intentionally and knowingly to pregenant deceased Sau. Manisha Pratap Edke and therefore, thereby, committed offence punishable under Section 316 of I.P.C.

4. The appellant-accused along with his wife, son and daughter-in-law were staying in the house situated

in the land at village Wasumbe, Tal.Tasgaon. On 17/3/1999 at about 7.30 p.m. the appellant demanded bread, same was served. The deceased Manisha was cooking on the kitchen platform, which is in front of a house. The accused therefore, insisted for giving food. The accused left the premises and went away and came back and demanded milk to Babutai (P.W. 5), wife of the accused, asked him to wait. The accused at that time was sitting on the platform, which was made for cooking. Babutai wife of the accused went towards fowl which was away from the kitchen to for casing the hens, she heard the shouts of the deceased. She immediately returned and saw that the appellant-accused was left the spot and running towards the western door. P.W.5, Babutai therefore, shouted for help by taking the deceased on her lap after some other persons gathered. The father of the deceased was informed who had been to Wasumbe. The complaint was filed at Exh.13 against the accused. Based on which offence was registered under section 302 of Indian Penal Code on 18/3/1999 at about 5.30. p.m. The police accordingly rushed to the spot. They noticed that the dead body of the deceased lying in the pool of blood. The inquest panchanmaa Exh. 14 was drawn. The body was referred to the hospital for post-mortem. The

spot panchanama Exh.15 was also drawn. The sickle which was used by the accused, article 10, was seized under panchanmaa Exh.22. The clothes of both the accused and deceased were also forwarded to Chemical Analyser for report. After due investigation, the charges were framed against the accused. He denied the same. However, half hearted defence had been taken about the insanity of the appellant-accused, without leading any evidence in support of his defences. The prosecution has examined 7 witnesses. The learned Sessions Judge, based on the same, convicted the appellant-accused rightly so.

5. There is no perversity or any unreasonableness in the reasoning given by the learned Additional Sessions Judge. According to us, the order of conviction and sentence is within the frame work of law as well as record.There are ample and sufficient material placed and proved by the prosecution to prove the guilty mind and the guilt of the accused.The Mother-in-law of the deceased, wife of the appellant, deposed against the accused-husband, in favour of her daughter-in-law-deceased. The deceased was pregenant of 28 week foitus, due to this murder, the un-born child

was also died.There is no serious dispute about the death of the deceased. The Inquest panchanma, post mortem report, testimony of the witnesses and other corroborated and medical evidence, have proved beyond reasonable doubt that the death was homicidal . This is one of the case where attempt had been made during the course pf tje [rpceedomgs that the father of the deceased had illicit relations with the wife of the accused and therefore false case had been put up against accused, as the accused had objection to the alleged relationship. The case of the insanity of the accused was also remained unproved. The murder in question took place in the house, from where the body of the deceased was found in pool of blood, from where other articles like bangle pieces, hairs, blood stains were collected by the police under and duly executed and proved panchanama Ex. 9. There is no dispute about the place of occurrence. One Kaka Tatoba Garalde P.W. 3, made statement Exh.12 the father of the deceased, that the deceased had regular complaint about her father-in-law and she was always in fear from him. The accused immediately after the murder of the daughter-in-law, had absconded. There was no eye witness to the incident.

6. Babutai, P.W. 5, wife of the appellant-accused deposed that when she was 15 feet away from the kitchen platform, the accused was in the house and demanding milk. She asked him to wait. She went out to case hens She heard shouts of deceased "Aiga". She rushed immediately to the house, having two doors on Eastern and Western side. She saw the accused was running from the room or western side door. She entered the room and saw the deceased was lying in the pool of blood.She called for help but nobody came. The sarpanch came thereafter. She disclosed to the Sarpanch, that the deceased was murdered by the appellant-accused, she also deposed that the accused used to quarrel with her on account of money. P.W. 5 witnessed that accused ran away immediately after killing her daughter-in-law from the room and there was nobody in the said room. This further supports the case of the prosecution that the accused was the author of crime. The evidence and testimony of Babuitai could not be shattered. It remained intact. This evidence find and proved the presence of the accused at the relevant spot and at the relevant time.

7. Sawant Rajaram Pandhare P.W. 6 on 25/3/1999 at

the instance of accused has witnessed the production of sickle Exh.20. The sickle was produced near the Vasti at Narhari Yedke, from the base of nirgudi tree with reddish black stains. The labels were put accordingly on the sickle.There were blood stains over the handle of the sickle. The blood group "B" was found over the said sickle.Exh.25. The bangle pieces, hairs which were collected from the spot of incident also having "B" blood group. The blood group of the deceased was "B". The presence of blood group "B" over the sickle and these articles also connect the weapon/article which was used for committing the murder of the deceased. The blood group "B" found from the clothes of the deceased, in C.A. report Exh.25. There was no dispute about the clothes of the deceased under panchanma Exh.15. The accused's clothes were also seized Exh.10 and proved by P.W. Santosh Jadhav. The human blood stains were found on the dhoti of the accused Exh.11. No explanation forwarded by the accused about the existence of the human blood on the dhoti. The injuries were six in numbers. The intention was very clear to kill her. The accused thereafter absconded immediately after the incident and he was arrested on 23/3/1999.

8. The other witnesses Supports the case of prosecution including deposition of P.W. 7, Investigating Officer. Nothing could shattered the evidence of the prosecution in the present case.

9. The defence was even raised that the accused's own wife has hatched this conspiracy to get rid of him, remained undefended. There is no such material or case made out by the appellant except the bald allegations.

10. This not the case where benefit of doubt can be given to the appellant.

11. Therefore, we are also of the view that this is a fit case of conviction so far as offence under Section 316 of I.P.C. is concerned. By killing the pregenant woman, the appellant has committed murder of her unborn child also. From the injuries as inflicted on the record and as proved there was no attack on the abdomen side of the deceased. The fatal injuries were on the back. Therefore, the attack and assault by the appellant on the deceased was only to kill her. It cannot be said that he had intention to cause death of unborn child also, who was 28 weeks in woumb of the

deceased. Therefore, considering the mateiral as well as reasoning given by the Court below, we are also of the view that this is not the case which will fall within the ambit of Section 316 of I.P.C. Therefore, the accused was rightly acquitted under section 316 of Indian Penal Code.

12. There are no mitigating circumstances in the case as referred above.There is no case of leniency made out or even otherwise the crime as committed shows intention and reckless attack on the deceased - daughter-in-law by the father-in-law. The wife of the accused also supports the prosecution case. We see there is no reason to reduce the punishment as imposed.

13. For the above reasons, there is no merit in the appeal. Appeal is dismissed.

14. We quantify the fees to be paid to the advocate appointed for the appellant at Rs. 750/- for this appeal.

[V.G. PALSHIKAR, J.]

[ANOOP V. MOHTA, J.]